

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

MOISES CUETO,

Defendant.


11-CR-1032-80 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received the attached letter from defendant Moises Cueto, which the Court treats as a supplement to his letter in support of compassionate release. The existing schedule for counsels' submissions on that application stand – defense counsel Anthony Ricco's letter-memorandum is due November 13, 2020, and the Government's letter-memorandum is due November 20, 2020 (Dkt. No. 2528). The Court expects that counsel, in their submissions, will address the conditions at FCI Fort Dix that Mr. Cueto's most recent letter describes.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: November 9, 2020
New York, New York

The Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
Daniel Patrick Moynohan U.S. Courthouse
500 Pearl Street
New York, N.Y. 10007-1312

Re: United States v. Cueto
Case No. 17-cr-1032 (PAE)

Dear Chief Judge Engelmayer:

My name is Moises Cueto (Fed. Reg. No. 75353-066). I am the Petitioner in the referenced original proceeding. I am presently incarcerated at FCI Fort Dix, Joint Base /MDL, NJ 08640. ("FCI Fort Dix"). As your Honor may recall I recently filed a Motion respectfully requesting compassionate release. I write this letter to update Your Honor with respect to the COVID-19 situation at FCI Fort Dix. The situation at FCI Fort Dix has deteriorated from the date I filed my Motion and without intending to burden the court with additional paperwork. I believe an update of the situation is appropriate because the lethal peril to me substantially increased.

The COVID-19 virus has now enveloped the entire FCI Fort Dix Facility. Numerous additional inmates as well as correction officers have tested positive for the disease. In a recent case in the Southern District of New York granting compassionate release, (United States v. Fernandez 12-cr-844, ECF Dkt 468 (S.D.N.Y. Oct. 14, 2020) District Judge Nathan described the COVID-19 situation at FCI Fort Dix in detail. Significantly, District Judge Nathan had previously denied the requested relief and changed her mind because of the COVID-19 onslaught sweeping the FCI Fort Dix Facility. District Judge Nathan in Fernandez, supra. states:

As of October 12, 2020, the BOP website reports that 5 inmates at Fort Dix are infected and 35 inmates have recovered from past infections. The reported number of infections is significant. However, the Court also has concerns that the reported numbers on the BOP website may not reflect the true scope of the outbreak at FCI Fort Dix. While the BOP website reported on 40 inmate cases (5

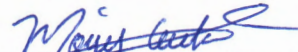
current and 35 recovered), it also reported that 106 inmates have tested positive at the facility. Id. Moreover, in a filing in another case in this district, the Government represented that there were 7 current COVID-19 cases among inmates at FCI Fort Dix on the same day the BOP website reported only 3 cases. United States v. Livardi, 11-cr-1032, Dkt No. 2520, at 4. Whatever the exact number of current cases at FCI Fort Dix, it makes a worrying uptick. The number of positive tests reported on the BOP website increased from 79 to 106 within the past few weeks. At the same time, the number of active cases is also increasing.

On October 9, 2020, in a Notice to the inmate population, LCDR Ronell Copeland RN, QIICN of the FCI Fort Dix medical staff advised. "There are currently inmates at FCI Fort Dix who have tested positive for COVID-19 and have been placed in isolation." Less than 2-weeks later on October 21, 2020, LCDR Ronell Copeland, RN QIICD further advised, "An inmate housed in SHU tested positive for COVID-19 and was isolated in 5851, 1st floor. A second inmate who exhibited symptoms of COVID-19... was isolated upon arrival from FCI Elkton." Five days later RN Copeland, disclosed "5⁴ confirmed cases of COVID-19 identified in unit 5812 have been isolated in unit 5851, 2nd floor. A confirmed case of COVID-19 identified in SHU is being isolated in health services..." These latest infections coincide with the arrival at FCI Fort Dix of inmates from FCI Elkton, Ohio; one of the most COVID-19 infected facilities with the greatest number of COVID-19 infected inmates and correction officers. Nine inmates at FCI Elkton have died from the disease. An even more recent posting on the BOP website discloses at least 160 inmates and 13 correction officers have tested positive for the COVID-19 virus at FCI Fort Dix. The situation is spiraling out of control.

The COVID-19 virus has now spread to no fewer than 5 of the 13 buildings at FCI Fort Dix housing inmates. Inmates in Buildings 5803, 5812, 5851, 5806 and 5703 are now infected. There is no way for me to effectively protect myself against the highly contagious and lethal COVID-19 virus. With the utmost respect I believe I have a meritorious motion and I also believe losing my life to this dread disease is in consistent with fundamental principles of justice and fairness.

I deeply appreciate Your Honor taking the time to read this letter.

Respectfully Submitted,



Moises Cueto

Petitioner

appearing pro se

proceeding in forma pauperis

Reg. No. 75353-066

FCI Fort Dix

P.O. Box 2000

Jcint Base /MDL, N.J. 08640

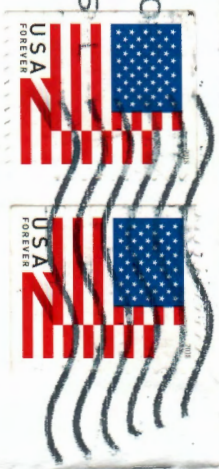
Date: November 4, 2020

From: Moises Cueto Reg. No. 75353-066
 FCI Fort Dix
 P.O. Box 2000
 Joint Base MBL, N.J. 08640

Rec'd 11/4/20
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TO: The Honorable Paul A. Engelmayer
 United States District Judge
 Southern District of New York
 Daniel Patrick Moynihan U.S. Courthouse
 500 Pearl Street New York, N.Y.

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